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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,518	01/26/2001	Pierre Messier	CLW 2 0142	5871

7590 03/15/2002  
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EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 03/15/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.



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**Office Action Summary**

Application No.

09/770,518

Applicant(s)

MESSIER ET AL. 

Examiner

MONZER R CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).
3. Claims 1-15, and 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Monticello et al (U.S.P.N. 5,891,392).

With respect to claims 1, 6, and 11; Monticello et al teaches the following: an apparatus (col.4, lines 59-64), a method (columns 8-9), a composition (col.1, lines 7-12), a flash vaporization component (col.2, line 30), an effective amount of an antimicrobial agent (col.1, line 48), and applying a liquid flash-dry disinfectant composition as an aerosol spray onto a surface (col.7, lines 9-11 and lines 20-23). Since the composition includes ethanol and hydrogen peroxide,

then it is an inherent property of the composition to leave an essentially dry surface having antimicrobial agent deposited thereon.

With respect to claims 2, 7, and 12; Monticello et al teaches that the composition consists of flash vaporization component and an antimicrobial agent (col.1, lines 39-48).

With respect to claims 3-4, 8-9, 13-14, and 22-23; Monticello et al discloses that the antimicrobial agent includes hydrogen peroxide, and the flash vaporization component includes ethanol (col.1, lines 39-48).

With respect to claims 5, 10, and 15; Monticello et al discloses the following: the flash-dry disinfectant composition includes 3 to 30% by volume hydrogen peroxide (col.4, lines 15-16 and table 1), 10 to 85% by volume of ethanol (col.1, line 44), and 10-65% by volume of water (col.1, line 50).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monticello et al (U.S.P.N. 5,891,392) in view of Mundschenk et al (U.S.P.N. 5,665,332).

The teachings of Monticello et al with respect to claims 1-15, and 22-23 have previously been set forth.

With respect to claims 18-21; the limitations in those claims where addressed above with regard to claims 2-3, and 4-5. However, with respect to claims 16 and 17; Monticello et al fails to disclose a dispenser with two separate chambers.

With respect to claims 16-17; Mundschenk et al, which is in the art of dispensing a disinfectant composition onto a surface (col.3, lines 10-17) using

hydrogen peroxide (col.3, line 18) and an alcohol (col.5, lines 18-19), discloses that the dispenser includes multiple containers (col.4, lines 50-67). Furthermore, the dispenser includes mixing means (col.4, line 56 and line 62) wherein the various components are mixed just prior to application of the composition onto a surface. Thus, the choice of using a single container dispenser as taught by Monticello et al (col.4, lines 59-62) or a multi-container dispenser is well known and further is well within the purview of the skilled artisan (Mundschenk et al, col.4, lines 65-67).

### ***Conclusion***

8. The prior art made of record but not relied upon is considered pertinent to applicant's disclosure. Matsunaga et al (U.S.P.N. 4,141,748), Monticello et al (U.S.P.N. 6,106,774), and Petri et al (U.S.P.N. 6,096,349) disclose the concept of using hydrogen peroxide and ethanol to disinfect surfaces. Sinclair et al (U.S.P.N. 5,265,775), which is part of the IDS, discloses the use of multi-container dispenser.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding

is assigned are (703) 305-3599 for regular communications and (703) 305-7719 for After Final communications.

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*  
Patent Examiner  
AU 1744  
March 6, 2002

*Robert J. Warden, Sr.*  
ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
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